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February 20, 2023

Re: In the Matter of Substantive Policy Statements to Guide the Arizona Power Plant and Transmission Line Siting Committee (ALS-00000A-22-0320)

Arizona Corporation Commissioners
Members of the Arizona Power Plant
and Transmission Line Siting Committee and
All Interested Stakeholders:

Arizona Electric Power Cooperative, Inc., Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, and UNS Electric, Inc. (collectively “Affected Utilities”) reiterate our thanks to Commissioner Marquez Peterson for opening this docket and raising important issues regarding the Arizona power plant and line siting process. As stated in the January 17, 2023 letter filed in this docket, the Affected Utilities support efforts to clarify and modernize the Arizona Power Plant and Transmission Line Siting Committee’s (“Committee”) rules and procedures. Among other things, the Affected Utilities are concerned with the current Committee backlog, which results primarily from the exceptionally large number of generation interconnection “tie-line” applications now being filed. At present, the backlog is such that applicants for a CEC cannot get a hearing scheduled until the end of 2024. That reality is highly concerning to our companies because it has the potential to hinder our respective abilities to get needed projects approved and on-line when required to serve our customers and members in Arizona.

Moreover, as Commissioner Marquez Peterson points out, the process for obtaining a certificate of environmental compatibility (“CEC”) is complex and costly. Indeed, an applicant for a CEC typically must retain consultants to help prepare the environmental and other impact studies required by Arizona law to accompany a CEC Application, as well as attorneys to help facilitate the hearing process. In addition, the Committee is required by law to hold a hearing in the county in which the transmission line will be constructed, which is often in rural or remote areas of the State. The responsibility for securing and funding both a hearing venue of adequate size and hotel accommodations for Committee members, attorneys, witnesses, and other participants in the process falls on the applicant. The applicant must also fund an audio-visual team to provide internet and virtual hearing capabilities, as well as ensure that the room will be equipped with sufficient tables, chairs, and other amenities for all participants. Hearings are always scheduled to begin in the afternoon on the first day to give Committee members who reside far from the hearing location time to get there, which means that the hearing itself typically lasts a minimum of two days, even for the least controversial of applications. For this and other reasons, it is not unusual for the total cost of the CEC application process to exceed \$250-300,000 for the most basic of applications, rising to in excess of \$650,000 and much higher as the proceedings become increasingly complex. For the Affected Utilities, that amount ends up being recovered in rates paid by our customers and members.

The Affected Utilities understand the need for this process for most projects. Such an extensive evaluation is important for significant projects that must be fully vetted to ensure their compatibility with the environment and ecology of Arizona. But it should not be required for smaller projects that, by their nature, have little to no environmental footprint. We recognize that the Legislature may be taking steps to remedy this concern. However, we also agree with Commissioner Marquez Peterson that any legislative solution will take several months to implement if it passes at all, and that a more urgent, Commission-driven solution is needed.

The Affected Utilities therefore offer the following suggestions for the Commission's potential inclusion in a substantive policy statement:

(1) Interpret “series of structures” to mean “three or more” poles, but exclude from the series any poles located on the site of existing energy infrastructure.

An important first step, as suggested in the Draft Potential Substantive Policy Statement No. 1, is to clarify what projects constitute a “transmission line” within the meaning of A.R.S. § 40-360(10) – specifically, what constitutes “a series of new structures.”¹ As a legal matter, no caselaw exists regarding how many poles constitute a “series” in the line siting context. However, the Arizona Court of Appeals has interpreted the meaning of the word “series” in the criminal context (examining the phrase “continuing series of violations”) as meaning three or more.² In doing so, the Court relied on the definition of “series” contained in Webster's Third New International Dictionary (1966): “a group of *usually three or more* things or events standing or succeeding in order and having a like relationship to each other.”³ Notably, that version of Webster's dictionary was published close in time to the promulgation of the line siting statutes in 1971, thus indicating that the common and approved use of “series” at that time constituted “three or more.”⁴

This interpretation is also consistent with how the phrase “series of structures” has historically been interpreted by the Commission and the Committee. For example, during a 2021 pre-filing meeting, former line siting Chairman Thomas Chenal expressed his observation that “the Corporation Commission . . . has, at least traditionally, customarily thought of a series as

¹ A.R.S. § 40-360.

² *State v. Tocco*, 156 Ariz. 110, 115 (App. 1986) (citing *United States v. Valenzuela*, 596 F.2d 1361, 1367 (9th Cir. 1979) (“[W]hile all dictionaries may not precisely specify the number of related, successive events which are necessary to constitute a series, we think the District Court's instruction that a series must consist of three or more federal narcotic law violations was squarely based on common usage.”) (internal citations omitted)).

³ *Id.* (emphasis added).

⁴ See A.R.S. § 1-213 (requiring that statutory “[w]ords and phrases shall be construed according to the common and approved use of the language.”)

being three or more.”⁵ The Commission has also opined that the construction of a substation and two transmission poles is **not** a “transmission” line that would trigger the need for a CEC.⁶ This interpretation is also consistent with the Affected Utilities’ historical understanding of the phrase.

However, absent from the definition of “transmission” line is any indication of what poles should be counted towards one of the series. Here, the Declaration of Policy underlying the siting statutes is instructive:

The legislature hereby finds and declares that there is at present and will continue to be a growing need for electric service which will require the construction of **major new facilities**. It is recognized that such facilities cannot be built without in some way **affecting the physical environment where the facilities are located**. The legislature further finds that it is essential in the public interest **to minimize any adverse effect upon the environment and upon the quality of life of the people of the state which such new facilities might cause**.⁷

Clearly, the original drafters of the line siting statutes were focused on balancing the impact of “major new facilities” – large but necessary energy infrastructure – with the existing physical environment. However, if the environment is already impacted by energy infrastructure (be it a switchyard, substation, or generation site), the construction of the new facilities would have no incremental adverse effect on the environment or anyone’s quality of life, and those facilities should thus not be considered part of the “series” of new structures for which the environmental impact should be analyzed. This reading of the statute makes it more likely that only “major new facilities” will be required to file for a CEC, not small projects to be constructed on land that, at least in part, has already been impacted by energy infrastructure.

For the same reason, reconductoring a line or replacing old structures with new ones within the location approved by the Commission in the underlying CEC should not trigger the CEC process, because doing so does not have any new adverse impact on the environment as contemplated by the line siting statutes.

The Commission’s policy should also make clear that the “series of structures” contemplated is linear in nature and that a CEC would not be required for the construction of, for example, two sets of two poles that feed into a substation or switchyard in a parallel or another non-linear fashion. Such a construction conforms to the commonly understood meaning of “series” (things that are “succeeding in order”⁸) would be consistent with the legislature’s intent that only “major new facilities” should be subject to the siting process (not a handful of minor new facilities).

⁵ See e.g. Cielo Azul Prefiling Conference Transcript, June 17, 2021 (Chairman Chenal) at 25:16-19

⁶ See Decision No. 77761 (October 2, 2020).

⁷ *Declaration of Policy*, Laws of Arizona 1971, Chapter 67, p. 180 (emphasis added).

⁸ See *State v. Tocco*, 156 Ariz. at 115.

Finally, the Commission should memorialize in policy its historical practice of not requiring a CEC for the construction of a substation. A.R.S. § 360(10) defines transmission line to mean, in relevant part, “a series of new structures erected above ground and supporting one or more conductors designed for the transmission of electric energy at nominal voltages of one hundred fifteen thousand volts or more **and all new switchyards** to be used therewith...” (emphasis added). While the statute requires a “switchyard” (which is part of the transmission system) to be sited as part of a transmission line, it makes no similar requirement for a substation. The Commission has acknowledged that substations do not need to go through the CEC process, *see* Decision No. 77761, and it makes sense to reflect that interpretation as part of any forthcoming policy.

(2) Establish a priority system for CEC hearings.

At present, the Committee Chair schedules hearings on a first-come, first-served basis. This practice worked fine when the Committee only handled a few CEC applications each year. However, the Committee is now scheduled to hear no fewer than 33 CEC applications in the next 18 months – and the pace of new applications is not slowing. To ensure that a project has a spot in the queue, the Affected Utilities must ask for hearings to be set years in advance. This process is unworkable, and there is no system in place to ensure that projects that need to be on-line sooner than the current scheduling process would allow will have a timely hearing. As a practical matter, the line siting statutes require the Committee to hold a hearing on an application within a specified timeframe after the application is filed.⁹ A frustrated applicant, unable to work through the existing process, could just file an application with the Commission and the Committee will have to accommodate it, or the project could be built without any regulatory evaluation or approval.¹⁰ Certainly, such an outcome is not in the public interest. The Commission should thus work with impacted stakeholders and the Committee Chair’s office to develop a system for identifying and prioritizing more urgent projects.

(3) Make changes and provide guidance that will improve the CEC process for non-exempt projects.

Finally, the Commission should include in any policy the following recommendations that will improve the overall CEC process:

- The Affected Utilities are routinely asked by stakeholders to underground transmission facilities. As the Commission knows, undergrounding a transmission line can be ten to twenty times more expensive than building a line above ground. The Commission has often acknowledged that ratepayers should not pay the extra cost of undergrounding a transmission line. Including language to that effect in a policy would be helpful to applicants who need to explain the issue to stakeholders in a CEC proceeding.

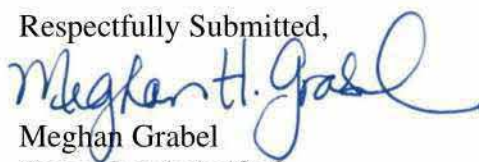
⁹ *See* A.R.S. § 40-360.04.

¹⁰ *See* A.R.S. § 40-360.08(B).

- A frequent issue in CEC proceedings is the efficacy of the applicant's public outreach process. The statutory outreach requirements are minimal, providing only for notice in a newspaper of general circulation and to certain affected jurisdictions. However, the Committee and the Commission often, and reasonably, expect more than that from applicants. Explaining what type of and how much public outreach the Commission expects of CEC applicants would be useful to ensure that all are on the same page as to what is required and that all reasonable expectations are met.
- Since the COVID-19 pandemic, CEC hearings have been conducted in a hybrid virtual/physical attendance platform. Given the remoteness of certain projects that require a CEC, the practice of allowing virtual participation has proven to be helpful to both the applicants and the Committee. The Commission should endorse the continuation of the hybrid platform for CEC hearings.
- CEC dockets are one of the two types of proceedings before the Commission that still require physical filings. Applicants are required to file 25 physical copies of a CEC application and all other documents that need to be filed during the course of the CEC proceeding (and then 13 hard copies for any documents to be filed after the CEC is awarded). Given the size of CEC applications, this requirement is both costly and environmentally unsound. The Commission should allow electronic filing in CEC dockets, with the understanding that if any Commissioner or Committee member wants a hard copy, they can reach out to the applicant through the Chairperson of the Committee and will receive one.

Again, we are grateful for Commissioner Marquez Peterson's attention to these matters and look forward to working with Chairman O'Connor and all of the Commissioners on the important issues raised in this docket.

Respectfully Submitted,



Meghan Grabel

For and on behalf of

Arizona Electric Power Cooperative, Inc.,

Salt River Project Agricultural Improvement and
Power District,

Tucson Electric Power Company,

UNS Electric, Inc.